(1)

Supreme Court, U.S.
FILED

001835 MAY - 3 2001

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

ADOUDA ADJIRI,
Petitioner,

v.

EMORY UNIVERSITY,
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

DR. Adouda ADJIRI, *Pro Se*
1231 Clairmont Road # 40-D
Decatur, GA 30030
Phone: (404) 235 0647

30 pp

QUESTIONS PRESENTED

This is a civil case of employment discrimination that involved a confession from the defending party but the case never went to trial nor it had ever been resolved otherwise in favor of the complaining party.

Petitioner's questions to the Supreme Court concern summary judgement described under Fed.R.Civ.P. 56 and are as follows:

1. Should the defendant, who had confessed being at fault, be allowed to file for summary judgement?

2. Can the lower court enter summary judgement against the plaintiff when the defendant had actually confessed under oath being at fault?

3. Should summary judgement, as a procedural step, be eliminated in employment discrimination cases?

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Emory University
Dr. Garth E. Austin
Dr. Weigo Zhao
Mrs. Jipu Lu

In an order issued on May 7, 1997, the Honorable Magistrate Judge John E. Dougherty dismissed individuals Dr. Garth E. Austin [9], Dr. Weigo Zhao [5] and Mrs. Jipu Lu [9] who were named defendants in the original complaint filed on November 18, 1996.

TABLE OF CONTENTS

OPINIONS BELOW.....1

JURISDICTION.....1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....2

1. RULING ON APPEAL.....3

2. RULES INVOLVED.....4

STATEMENT OF THE CASE.....7

REASONS FOR GRANTING THE WRIT.....13

CONCLUSION.....16

INDEX TO APPENDICES

APPENDIX A: Decision of the 11th Circuit U.S. Court of Appeals

APPENDIX B: Decision of the U.S. District Court for the Northern District of Georgia

APPENDIX C: Decision of the 11th Circuit U.S. Court of Appeals Denying Rehearing

APPENDIX D: Post-Hearing Decision of the Georgia Department of Labor

TABLE OF AUTHORITIES CITED

CASES **PAGE**

Daniels v. GNB. Inc.,
629 So. 2d 595 (Miss. 1993).....6

Dumbadze v. *Agent of Canadian Car & Foundry Co.*,
38 NYS 2d 991. 4

First Trust & deposit Co., v. *dent.*,
34 NYS 2d 282, 263, App. Div. 1058.....3

Gurge v. *Agency of Canadian Car & Foundry*
Dumbadze's estate,
47 NYS 2d 315, 267 App.Div. 878.....4

National Surety Co. v. *First National Bank of Indiana*,
106 F. Supp. 302.....5

NY—Brescie Const. Co. v. *Walard Const. Co.*,
246 NYS 862, 238 App. Div. 360 6

STATUTES AND RULES

28 U.S.C. § 1254 (1).....1
28 U.S.C. § 2101 (e).....2
29 C.F.R. § 1604. 11 (c).....9
42 U.S.C. § 2000e.....4
Fed. R. Civ. P. 56.....2, 4, 5
Title VII of the Civil Rights Act of 1964.....4, 15

OTHER

OCGA § 34-8-157 (b)(3).....App. 6, 7, 8
OCGA § 34-8-194 (2)(A).....App. 6, 7, 8
OCGA § 34-8-195 (a)(3).....App. 8

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at **Appendix A** to the petition and is **unpublished**.

The opinion of the United States District Court appears at **Appendix B** to the petition and is **unpublished**.

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 8, 2001:

A timely petition for **panel rehearing** was denied by the 11th Circuit United States Court of Appeals on **March 8, 2001**, and a copy of the order denying rehearing appears at **Appendix C**.

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to Supreme Court Rule 11, petitioner is hereby filing a writ of certiorari because this case raises questions of imperative importance requiring immediate determination in this Court. 28 U.S.C. 2101(e).

According to Fed.R.Civ.P. 56, the District Court allowed respondent to file for summary judgement in spite of respondent's confession. [49].

On July 27, 1998, petitioner filed her answers in opposition to respondent's motion for summary judgement. [49-1]. But on January 25, 1999, the Honorable District Magistrate Judge John E. Dougherty ordered, reported and recommended that respondent's motion for summary judgement be granted. [55].

On March 23, 1999, the Honorable District Judge Richard W. Story granted respondent's motion for summary judgement. [55-1]. And in a judgement issued on March 24, 1999, the District Court dismissed petitioner's case. [59].

On July 19, 1999, the Honorable District Judge Richard W. Story denied petitioner's motion for reconsideration. [59 -1].

1. RULING ON APPEAL

The Appeal Court sanctioned the departure from the accepted course of judicial proceedings by the District Court, as to call for an exercise of this Court's supervisory power.

On February 2, 2001, the 11th Circuit Court of Appeals affirmed the District Court's decision granting respondent's motion for summary judgement.

The Appeal Court stated that petitioner failed to make *prima facie* showing of hostile work environment sexual harassment, sex discrimination and retaliation. The Appeal Court also stated that petitioner did not exhaust her race and national origin claims. On a motion by defendant for summary judgement, plaintiff is not required to establish his defense to the motion by a preponderance of the proof. *First Trust & deposit Co., v. Dent.*, 34 NYS 2d 282, 263, App. Div. 1058.

In a timely filed petition for panel rehearing, petitioner showed the *prima facie* of her case as she met all the requirements, for her race and national origin claims, hostile work environment sexual harassment, sex discrimination and retaliation. Petitioner also stated the legal arguments, which make employer Emory University liable in sexual harassment by supervisor and co-workers.

Even though petitioner had clearly shown the *prima facie* of her case evoked by the court, still that did not change the Appeal Court's opinion as it denied petitioner a chance for rehearing.

Moreover, the Appeal Court, similarly to the District

Court, never challenged respondent to show that the discharge of petitioner on July 22, 1996 was for non-discriminatory reasons. If respondent is allowed to file for summary judgement in spite of its confession, then the court had to consider that on a motion by the defendant for summary judgement, the burden is on defendant to establish his defense by proof of the facts pleaded. *Dumbadze v. Agent of Canadian Car & Foundry Co.*, 38 NYS 2d 991; Aff'd. *Gurge v. Agency of Canadian Car & Foundry Dumbadze's estate*, 47 NYS 2d 315, 267 App. Div. 878.

Even if it did, respondent could never meet its burden because it cancelled the grounds of the discharge by making contradictory statements and finally confessed under oath but without reinstating petitioner to her former position or clearing her records, intending thus to cause permanent damage to petitioner's career.

2. RULES INVOLVED

On November 18, 1996, petitioner brought action, under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, against her former employer respondent Emory University. At earlier stages of this case, all respondents named in this lawsuit filed motions to dismiss. The District Court granted motions to dismiss individuals Zhao [5] and Austin & Lu [9] but denied Emory University's motion to dismiss. [6].

Respondent refused to settle the case and rejected a future possibility for settlement, as filed in its Preliminary Planning Report and Scheduling Order. [27]. Following Fed.R.Civ.P. 56, respondent filed a

motion for summary judgement, which was granted by the District Court. [55-1]. By entering summary judgement against petitioner, the District Court dismissed her case. [59].

In order to answer the questions raised in this petition, it is imperative to review the purpose that summary judgement intends to serve as currently defined under Fed.R.Civ.P. 56.

When the District Court dismissed petitioner's case, it did so after summary judgement but not before. This makes summary judgment appear as a second round of screening. In that situation, the District Court should have given petitioner equal chance during pre-trial discovery period anterior to summary judgement. However, this was not the case because when both petitioner and respondent filed motions to compel, the District Court granted respondent's motion to compel [36-1] but denied petitioner's motion to compel. [40-1].

In 208 pages plus 38 pages of literature filed in its motion for summary judgement, respondent diverged the attention of the court from the main issue of this case which is the wrongful discharge of petitioner and for which respondent had already confessed being at fault.

Respondent's arguments to the court were based on statements and affidavits of the individuals who abused and discriminated against petitioner, and also on selected partial evidence filed by petitioner, which was used against her. The court may not decide issues of fact on a motion for summary judgement. *National Surety Co. v. First National Bank of Indiana*, 106 F. Supp. 302. And the court should not make findings of fact and conclusions of law on granting a motion for

summary judgement. *NY—Brescie Const. Co. v. Walard Const. Co.*, 246 NYS 862, 238 App. Div. 360.

Summary judgement motion reduced then the case to a matter of "he said, she said" without petitioner having a chance to cross-examine respondent's witnesses. That would become a subject of trial from which petitioner was deprived as the District Court entered summary judgement against her. Summary judgement motion is never to be used as a substitute for trial. *Daniels v. GNB. Inc.*, 629 So. 2d 595 (Miss. 1993).

It is noteworthy to mention here that when petitioner was called for a deposition, respondent's counsel tried to make her say that she abandoned her job. This is an example of several similar situations. Unsatisfied with her answers, the counsel compelled petitioner to a second deposition, in a motion granted by the District Court. [36 -1].

STATEMENT OF THE CASE

Petitioner is a white female, Berber-speaking citizen of Algeria. Petitioner graduated in 1993 from the University of Paris XI, France with a Ph.D. degree in Physiology and Genetics of Microorganisms.

In November 1993, respondent Emory University hired petitioner as a post-doctoral fellow. Petitioner worked for two years in the Biology Department under the supervision of Dr. Gray F. Crouse, a Biology Professor at Emory University. In January 1996, petitioner transferred to work in the Pathology Department under the supervision of Dr. Garth E. Austin, a Chief of Clinical Pathology at the Veterans Affairs (VA) Hospital and an Associate Professor of Pathology at Emory University. Dr. Crouse's laboratory was located on Emory campus whereas Dr. Austin's laboratory was located at the Decatur VA Hospital.

Neither supervisor Crouse, nor any male co-worker harassed petitioner in the Biology Department. Therefore, petitioner never complained while in the Biology Department.

However, in the Pathology Department, petitioner was insulted and harassed by her co-worker Dr. Weigo Zhao, a Chinese male and an Emory Lead Research Specialist. Soon after she started working in Austin's lab, petitioner noticed that radiation safety regulations were not respected. Petitioner shared her concerns with her co-worker Zhao who not only refused to cooperate, but insulted petitioner. When the VA Radiation Safety Office intervened and assisted petitioner, Zhao became more aggressive and put restrictions on petitioner so that she won't freely use

the material in the lab such as the printer and the chemical hood. Later on, petitioner found that radiation safety was a chronic problem in Austin's lab. Mr. Roland Phillips, of the VA Radiation Safety Office, shared with petitioner different documents including memorandums he had been filing regarding the handling of radioactive material in Austin's lab. (Pet. App. 4).

Moreover, in Pathology Department, supervisor Austin sexually harassed and intimidated petitioner. Austin started winking at petitioner and making remarks about her hair and clothing and once, while she was working late in the lab, he took her for dinner. In March 1996, when she attended with Austin a business meeting in Taos, New Mexico, petitioner found that Austin did not make a reservation for a separate room for her. (Pet. App. 6). Austin compelled petitioner to share with him his one-bedroom hotel suite for the entire period of the meeting that lasted five days but petitioner did not have a sexual relationship with Austin and did not allow him to touch her.

Austin lacked respect not only to petitioner as his female employee but to his own wife Ellen as well. Ellen went on a weekend ski-vacation to Taos and witnessed her husband's hotel arrangement. Ellen does not work for her husband and did not attend the meeting and left, as planned by her husband who made the flight reservation and scheduled her trip back to Atlanta for March 18, 1996. (Pet. App. 7).

Austin booked the flights to Colorado Springs in the state of Colorado, which is not the closest airport to Taos where our business meeting was being held. (Pet. App. 8). Moreover, we flew on March 15, 1996 for a

meeting which opening cession was scheduled for the evening of March 17, 1996 and lectures officially began early March 18, 1996.

At her return from Taos, petitioner asked Austin to stop harassing her but her work conditions grew only to become unreasonably abusive. Petitioner decided to complain and filed a report with the VA Police Department on April 12, 1996. (Pet. App. 9). Since she was an Emory but not a VA employee, petitioner had to address her further complaints to the appropriate offices at Emory. Petitioner complained first to the Emory Employment Relations Office then to the Equal Employment Opportunity Office but no corrective action was taken. (Pet. App. 10-11). Petitioner's complaints were activities all protected under 29 C.F.R. § 1064, 11(c).

Because respondent did not take any remedial action to stop their harassment, Zhao continued preventing petitioner from using the printer again, the UV light, and biological solutions. Austin on his side used Mrs. Jipu Lu, a Chinese female co-worker and a volunteer in the lab. On July 10, 1996, Austin asked petitioner to make a copy of a paper but Lu assaulted petitioner and prevented her from making a copy of that paper. Petitioner maintains that Lu did not act alone but was used by Austin mainly when Zhao was away from the lab. Petitioner never complained before about Lu until after this unique incident involving her and for the first time. (Pet. App. 16 and 22).

On July 22, 1996, petitioner, desperate for help, took an appointment with Mrs. Carol McMurtray, a Business Manager in the Pathology Department at Emory, who surprised petitioner with the discharge that terminated her employment. Prior to this,

petitioner tried to get the attention of the President of Emory, Dr. William Chace who responded five months later expressing his sympathy for petitioner's unfortunate situation. (Pet. App. 14).

Mrs. McMurtray issued two different separation notices. (Pet. App. 19-20). The first one stated quote:

> "Failure to interact appropriately with your co-workers in the laboratory, insubordination and unwillingness to communicate with your supervisor, and job abandonment."

In the second separation notice, Mrs. McMurtray did not state job abandonment but stated quote:

> "Failure to interact appropriately with your co-workers in the laboratory, insubordination and unwillingness to communicate with your supervisor."

Mrs. Sharon Carter, a Benefits Specialist at Emory Human Resources disclosed, to the Georgia Department of Labor, the exact dates of petitioner's employment but stated only job abandonment as a reason for separation. (Pet. App. 21).

On October 28, 1996, when the Georgia Department of Labor called for a hearing, Mrs. Carter, as respondent's representative, confessed under oath that Emory University was at fault in the discharge of petitioner on July 22, 1996.

The District Court denied petitioner's request for an order to access the sealed transcript of the hearing [20-1]. The post-hearing statement (Pet. App. 29)

released by the hearing officer Mr. Peter J. Katsegianes is quoted below, where petitioner is the claimant and Emory University the employer:

> "Considering the employer's sworn affirmation that claimant was not at fault in her separation, as well as claimant's denial of fault and the absence of any admissions against her best interest, it is concluded that the employer has not carried its required burden to demonstrate that the claimant was discharged under disqualifying conditions". (See Appendix. D).

After filing this lawsuit, the local Immigration and Naturalization Service (INS) targeted petitioner. On March 25, 1998, the INS seized petitioner's passport along with the document (Form I-94) that shows her legal entry to the United States. The local INS also took petitioner's picture and fingerprints on a red chart that is reserved only for criminals who have committed a crime. Petitioner committed no crime but complaining about practices made unlawful by the constitution of her host country. At this point, petitioner does not see or know how to clear those records, accusing her of a non-existing crime, and failed so far in her attempts to get back her passport and Form I-94.

In three separate hearings that followed, the local INS put enormous pressure on petitioner to file for political asylum for which she is never qualified. It is needless to remind here that making false statements under oath or filing a frivolous application is punishable by law. In this particular case, deportation would be the appropriate punishment. The local INS is still working to that end and that would contradict an

earlier decision by the Department of Justice in which it waived petitioner from going back to her home country as required by Immigration Rule 212(E). (Copy filed at the deposition).

Petitioner holds respondent Emory University liable for all INS actions taken against her because these actions are not only unconstitutional but also contradictory.

The combined actions by respondent Emory University and the local INS caused petitioner great suffering and as a result, she is suffocating like a python's prey.

REASONS FOR GRANTING THE WRIT

It is of extreme importance that the Supreme Court grants this writ because of the following reasons:

1. It is known in criminal cases that when the suspect confesses his or her crime, the case moves forward but is not dismissed and the criminal court does not challenge the prosecution to provide extra evidence as if there were not a confession of the crime. The same logical reasoning must then apply to civil cases in which the respondent confessed its wrong-doing. Since respondent Emory University confessed being at fault in the discharge of petitioner but denied any possibility for settlement, this case must move to a jury trial. Moreover, once a court has found a cause for action, the case must move toward a resolution and dismissal must never become its fate.

2. The District Court allowed summary judgement and overlooked therefore respondent's confession. If summary judgement is considered a second round of screening, it is still unfair because it prolongs suffering of the victim, considering the fact that the decision on the merits of the case was reached earlier by the court when it denied respondent's motions to dismiss.

This case clearly showed that the purpose of summary judgement is to achieve dismissal regard-less of any consideration. For this, the District Court gave respondent advantage and granted its motion to compel while it denied the same right to petitioner. By the end, summary judgment turned to be only a mean by which justice is delayed in order to deny it. Consequently, eliminating summary judgement be-comes the inevitable conclusion, knowing that the

Court of Appeals endorsed the District Court's rulings.

3. It is objective for a lower court to impose rules that intend to screen important cases from frivolous ones and organize the pre-trial proceedings. However, it is unjust for a lower court to impose rules that solely intend to give the employer advantage over the employee, victim of discrimination. Petitioner's case showed, based on evidence, that summary judgement as an example of such local rules imposed by the lower court, aims at creating a hurdle intimidating the victim, delaying justice to finally deny it.

4. Victims of employment discrimination are often bound to resign or are discharged, as it is with petitioner's situation. Therefore, many of these victims become unable to hire lawyers and suffer in silence, as if the laws protecting their rights do no exist. Few others however, who did not resign and did not wait for their discharge, showed their despair by making rampages in shooting their co-workers.[1] This leads us to give an even more serious thought to summary judgement and as shown in this case, it made access to justice an impossible achievement. Therefore, and if we do not eliminate summary judgement in order to facilitate access to justice, we will run the risk of seeing, in the future, more shootings in workplaces.

5. Taking petitioner's case as an example, it is hard to imagine that every victim of employment discrimination must put her or his career and life on hold and

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[1] The media reported so far two such cases, one of them occurred in the heart of Atlanta, as nine workers at two Buckhead Office Buildings were killed in July 1999. The second shooting occurred in Honolulu where seven co-workers were killed at Xerox Corp, in November 1999.

give up all the joys for five consecutive years, for the hope to see one day justice rendered to them. Petitioner filed her case last century in November 1996. We are in a new century and petitioner is still at the pursuit of justice just because of summary judgement imposed by the lower court. Luckily petitioner does not have children to feed and is agonizing for her own survival only. This is not always the case with the victims of employment discrimination who have children and other dependents to feed and care for.

6. Laws of justice must not hang on rules of injustice. Eliminating summary judgement and not allowing to replace it with a similar rule that would intend indirectly to serve a similar purpose, will be a significant step toward erasing sexual harassment and discrimination in workplaces.

7. Summary judgement led the way to the dismissal of petitioner's case, allowed respondent to recover its costs and left the actual victim to drown in her pains. However, when employers learn that they no longer can count on summary judgement that gives them such advantages over their victim employees, they will be compelled to think otherwise and most likely would decide to reinforce anti-discriminatory practices rather than facing justice that can be more costly to them. Title VII will then triumph and be lived as a reality but not looked at as a simple black on white written law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

"S/Adouda ADJIRI".
Dr. Adouda ADJIRI, *Pro Se*
1231 Clairmont Road# 40-D
Decatur, GA 30030
Phone: (404) 235 0647

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-14804
Non-Argument Calendar

D.C. Docket No. 96-03038-CV-RWS-1

ADOUDA ADJIRI, Dr.,

Plaintiff-Appellant

Versus

EMORY UNIVERSITY,

Defendant-Appellee

GARTH AUSTIN, M.D. Ph.D.,
WEIGO ZHAO, et al.,

Defendants

Appeal from the United States District Court for the
Northern District of Georgia

(February 2, 2001)

Before DUBINA, CARNES and MARCUS, Circuit Judges.

FILED
U.S COURT OF APPEALS
ELEVENTH CIRCUIT
FEB 2, 2001
THOMAS K. KAHN
CLERK

PER CURIAM:

Appellant Dr. Adouda Adjiri ("Adjiri"), a *pro se* plaintiff, appeals the district court's grant of summary judgement in her civil rights action brought under Title VII of the1964 Civil Rights Act, 42 U.S.C. § 2000e. On appeal, she maintains that she was a victim of sexual harassment and discrimination based on sex, race, and national origin. She argues that the district court erred in granting summary judgement to defendant Emory University.

We review a district court's grant of summary judgement in a Title VII action *de novo. Hinson v. Clinch County, Georgia Bd. of Educ.*, 231 F.3d 821, 826 (11 th Cir. 2000). Summary judgement is appropriate only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law." Fed.R.Civ.P. 56(c).

After reviewing the record, we conclude the district court correctly found that Dr. Adjiri did not administratively exhaust her race and national origin claims. Furthermore, Dr. Adjiri failed to make a *prima facie* showing of hostile work environment-sexual harassment, sex discrimination, or retaliation. Accordingly, we affirm the district court's grant of summary judgement.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DR. ADOUDA ADJIRI, Plaintiff,	*	
vs.	*	CIVIL ACTION FILE
	*	NO. 1:96-cv-3038-RWS
EMORY UNIVERSITY, Defendant.	*	

JUDGEMENT

This action having come before the court, Honorable Richard W. Story, United States District Judge, for consideration of defendant's motion for summary judgement, and the court having granted said motion, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendant recover its costs of this action, and the action be, and the same hereby, is **dismissed**.

Dated at Atlanta, Georgia, this 24th day of March, 1999.

Prepared, Filed, and Entered
in the Clerk's Office
March 24, 1999
Luther D. Thomas
Clerk of Court
By: "S/Deputy Clerk".

LUTHER D.THOMAS
CLERK OF COURT
By: "S/Deputy Clerk".

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-14804-JJ

ADOUDA ADJIRI, Dr.,

Plaintiff-Appellant,

versus

EMORY UNIVERSITY,

Defendant-Appellee.

On Appeal from the United States District Court for
The Northern District of Georgia

BEFORE: DUBINA, CARNES and MARCUS, Circuit Judges.
PER CURIAM:

The petition (s) for rehearing filed by Appellant is DENIED.

ENTERED FOR THE COURT:
"S/UNITED STATES CIRCUIT JUDGE".

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
MAR 08 2001
THOMAS K. KAHN
CLERK

ORD-41

APPENDIX D

GEORGIA DEPARTMENT OF LABOR
APPEALS TRIBUNAL – SUSSEX PLACE, SUITE 150
148 INTERNATIONAL BLVD. NE, ATLANTA, GEORGIA
30303-1751

DECISION OF ADMINISTRATIVE HEARING OFFICER
- DOCKET 16180A 1996 -
SSN 260-87-5869

FSO 3200
APPELLANT – CLAIMANT

APPEAL FILED 09/30/1996
APPEAL HEARD 10/28/1996
RELEASE DATE 10/29/1996

EMPLOYER:

EMORY UNIVERSITY
BENEFITS CENTER
1762 CLIFTON ROAD
ATLANTA GA 30322

MAIL TO:

ADOUDA ADJIRI
1231 CLAIRMONT
ROAD # 40-D
DECATUR GA 30030

CLAIMANT:

ADOUDA ADJIRI
1231 CLAIRMONT
ROAD # 40-D
DECATUR GA 30030

APPEARANCES: The claimant was present. The employer was represented by Sharon Carter, Benefits Specialist.

O. C. G. A. PROVISIONS AND ISSUES INVOLVED:

OCGA Section 34-8-194 (2) (A) – Whether the claimant's discharge or suspension was not a result of the claimant's failure to follow rules, orders, instructions, or for a failure to perform the duties for which hired and would be entitled to benefits; or the claimant was discharged or suspended for failure to follow rules, orders, instructions, or failure to perform the duties for which hired and would not be entitled to benefits. TO RE-QUALIFY: The individual must return to work and earn insured wages equal to ten (10) times the weekly benefits amount of the claim and the individual becomes unemployed through no fault on the part of the individual.

OCGA Section 34-8-157 (b) (3) – Whether the employer's account may be charged for benefits paid due to the employer's failure to respond in a timely manner to the notice of claim filing even if the determination is later reversed on appeal.

STATEMENT OF THE CASE: The claimant appealed the Department's initial determination released on September 23, 1996, which held that the claimant had been discharged by their most recent employer. This employer has shown, by a preponderance of the evidence, that the claimant was discharged for failure to obey, orders, rules, or instructions, or a failure to discharge the duties for which employed. A disqualification is required in this case and the claimant

would not be entitled to benefits effective September 8, 1996, as provided for under the provisions of OCGA Section 34-8-194 (2).

FINDING OF FACT: The claimant worked for the interested employer from November 1993 to July 22, 1996 when she was discharged due to alleged insubordination and job abandonment. The employer specifically declined to challenge the claimant's appeal of the preliminary determination disallowing claimant benefits and specifically asserted that the claimant was not at fault regarding the separation. The claimant denied all employer allegations and made no admissions against her best interest.

Timely separation information was furnished by the interested employer.

REASONS FOR DECISION: OCGA Section 34-8-194 (2) (A) provides for a disqualification if it is shown that an employee has been discharged from work with his most recent employer for failure to obey orders, rules, or instructions, or for failure to discharge the duties for which employed. That Section of the law places the burden of proof on the employer to show by a preponderance of the evidence that the employee was at fault by a deliberate, willing, and knowing action on his part.

Considering the employer's sworn affirmation that claimant was not at fault in her separation, as well as claimant's denial of fault and the absence of any admissions against her best interest, it is concluded that the employer has not carried its required burden to demonstrate that the claimant was discharged under disqualifying conditions.

OCGA Section 34-8-157 (b) provides that benefits paid shall be charged against the account of the most recent employer. The amount charged shall be the lesser of benefits paid for the period of unemployment

or, the amount of wages paid by such employer during the period beginning with the base period of the claim or the maximum benefit amount of the claim.

DECISION: The determination released by the Department September 23, 1996, disqualifying the claimant effective September 8, 1996, is hereby set aside. The claimant shall be entitled to unemployment insurance benefits effective September 8, 1996, under the provisions of OCGA Section 34-8-194 (2). The claimant will be entitled to benefits for all weeks that claimant has met all the reporting and eligibility requirements as provided for under the provisions of OCGA 34-8-195 (a) (3).

The employer's tax account shall be charged the lesser of benefits paid for the period of unemployment or, the amount of wages paid during the period beginning with the base period of the claim or the maximum benefit amount of the claim, in accordance with OCGA Section 34-8-157 (b).

ADOUDA ADJIRI DOCKET:16180A 1996
260-87-5869 Page 3

Decision Released: OCTOBER 29, 1996.

"S/PETER J. KATSEGIANES".
Administrative Hearing Officer

Appeal Rights Expire: NOVEMBER 13, 1996

If you desire to appeal this decision, notify this office, as indicated below, in writing. APPEAL RIGHTS EXPIRE 15 DAYS AFTER DECISION ISSUED. Vrs

GEORGIA DEPARTMENT OF LABOR
148 INTERNATIONAL BOULEVARD, N.E.
SUSSEX PLACE – SUITE 150
ATLANTA, GEORGIA 30303

This is to certify that this decision was mailed on the above release date by ____ SS _____. The postmark date is the release date.

DOL-473A (2/95)